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March 26, 2008

### Broadcom Corp. v. Qualcomm Inc., No. 05-3350 (MLC) (JJH)

Dear Judge Hughes:

We have received Mr. Selwyn's letter dated March 24 (and filed March 25) which responds to my letter of March 19 relating to Broadcom's Rule 26(a) disclosures. We look forward to discussing the issues raised by these letters in a conference with the Court and thus will not burden the Court with a point-by-point written rebuttal.

We would, however, like to point out that one of the central arguments made in Mr. Selwyn's letter is directly contrary to the position Broadcom took in our meet and confer discussions relating to these issues, as confirmed by Broadcom's own prior letter on this subject (Kate Saxton's February 1, 2008 letter to me, which is attached as Exhibit C to my letter to the Court dated March 19). As that letter makes clear, Broadcom argued during our meet and confer discussions that both parties were obligated under Rule 26(a) to identify third parties who were likely to have discoverable information on which the disclosing party might rely. Indeed, Ms. Saxton's letter sought to take Qualcomm to task for having "itself listed no third parties (other than two of its own paid consultants) in its Amended Initial Disclosures"—something Ms. Saxton's letter characterized as an "omission" and a "serious deficiency" that was supposedly inconsistent with Qualcomm's position that this case would entail substantial third-party discovery.<sup>1</sup>

In Mr. Selwyn's letter to the Court, however, Broadcom reverses course entirely. Now, Broadcom claims—without citation to any authority—that "Rule 26(a)

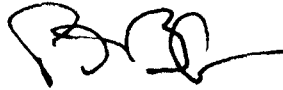
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<sup>1</sup> In response to Ms. Saxton's letter, Qualcomm subsequently served Supplemental Disclosures that included the names of witnesses associated with numerous third-party entities.

does not require a party to disclose the names of any third-party companies or organizations” and that “it would have been fully consistent with Rule 26(a) for Broadcom simply to have omitted any third-party companies or organizations in its Initial Disclosures”.

We would respectfully submit that, having successfully demanded that Qualcomm list third parties in its Initial Disclosures, Broadcom should not now be heard to argue that a different rule (which, in any event, is without support) should apply to its own Initial Disclosures.

Respectfully,

A handwritten signature in black ink, appearing to read 'P. Barbur', with a long horizontal stroke extending to the right.

Peter T. Barbur

The Honorable John J. Hughes  
United States District Court – District of New Jersey  
Clarkson S. Fisher Federal Building & U.S. Courthouse  
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Copy to counsel for all parties